

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CORY HUBBARD,

Plaintiff,

-against-

11 Civ. 0433 (LAK)

MYSAPCE, INC.,

Defendant.
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ORDER

LEWIS A. KAPLAN, *District Judge*.

In moving to dismiss the amended complaint, defendant argued that the Stored Communications Act ("SCA") "requires custodians of electronically-stored information to disclose that information to law enforcement authorities upon presentment of 'a warrant issued using the procedures described in the Federal Rules of Criminal Procedure (or, in the case of a State court, issued using State warrant procedures) by a court of competent jurisdiction.'" Def. Mem. 6 (quoting 18 U.S.C. § 2703(a)). Plaintiff responded to that argument. In its reply memorandum, however, defendant asserted for the first time that 18 U.S.C. § 2703(a) was amended in 2009, after the relevant date in this case, and that the version in effect previously did not contain the "court of competent jurisdiction" language. Def. Reply Mem. 5-6. It contended, also for the first time, that the offense that was under investigation when the warrant issued was of a "violation[] of [a] county ordinance[] or] penal ordinance[] of state authorities" within the meaning of Ga. Code Ann. § 15-10-2.

In the circumstances, plaintiff, on or before April 6, 2011, may file a sur-reply memorandum, not to exceed 7 double spaced pages. Defendant, on or before April 13, 2011, may file a response, not to exceed 5 double spaced pages, to any sur-reply memorandum filed by plaintiff. These additional filings may address only these two issues raised for the first time in the reply memorandum.

SO ORDERED.

Dated: March 28, 2011



Lewis A. Kaplan
United States District Judge